

§ 16.7

effect not less than thirty (30) days after the date of publication of such notice.

(d) The establishment of fees and charges under this section may, at any time, be suspended by the Secretary for any length of time.

[42 FR 26648, May 25, 1977, as amended at 42 FR 57686, Nov. 4, 1977; 55 FR 38315, Sept. 18, 1990]

§ 16.7 Participation in program.

(a) Any manufacturer, assembler, or private brand labeler of consumer products or importer of such products for resale, desiring to participate in this program will so notify the Secretary. The notification will identify the particular Specification to be used and the prospective participant's identification and model numbers for the products to be labeled. The notification must include a statement that if accepted as a participant in the program by the Secretary, the prospective participant will:

(1) Abide by all conditions imposed by these procedures:

(2) Abide by the conditions contained in the Specification, as prescribed in paragraph (d) of this section;

(3) Pay the fees and charges established by the Secretary; and

(4) Desist from using the Department of Commerce label and Mark if his participation is terminated under § 16.8.

(b) The Secretary shall act expeditiously on all requests to participate in the program and shall notify each prospective participant of her decision in writing. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(c) If a prospective participant seeking to participate in the program is notified by the Secretary that she proposes to deny that prospective participant the right to participate, that prospective participant shall have thirty (30) days from the receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such prospective participant in the event that he does not appeal such notification by the end of the thirty (30) day period. If however, such prospective participant requests a

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hearing within that thirty (30) day period, the Secretary's proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(d) The conditions set out in each Specification will include, but not be limited to, the following:

(1) Prior to the use of a Label, the participant will make or have made the measurements to obtain the information required for inclusion on the Label and, if requested, will forward within 30 days such measurement data to the Secretary. Such measurement data will be kept on file by the participant or his agent for two years after that product is no longer manufactured unless otherwise provided in the Specification.

(2) The participant will describe the test results on the Label as prescribed in the Specification.

(3) The participant will display or arrange to display, in accordance with the appropriate Specification, the Label on or with each individual product of the type covered except for units exported from the U.S. Participants who utilized more than one brand name may participate by labeling some or all of the brand names. All models with the same brand name must be included in the program unless they are for export only.

(4) The participant agrees at his expense to comply with any reasonable request of the Secretary to have consumer products manufactured, assembled, imported, or privately brand labeled by him tested to determine that testing has been done according to the relevant Specification.

(5) Participants may reproduce the Department of Commerce Label and Mark in advertising: *Provided*, That the entire Label, complete with all information required to be displayed at the point of retail sale, is shown legibly and is not combined or associated directly with any other mark or logo.

§ 16.8 Termination of participation.

(a) The Secretary upon finding that a participant is not complying with the conditions set out in these procedures or in a Specification may terminate upon 30 days notice the participant's right to continue his participation in

the program: *Provided*, That the participant shall first be given an opportunity to show cause why the participation should not be terminated.

(b) Upon receipt of a notice from the Secretary of the proposed termination, which notice shall set forth the reasons for such proposed termination, the participant shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed termination shall become final through the issuance of a written decision to the participant in the event such participant does not appeal the proposed termination within the thirty (30) day period. If, however, the participant requests a hearing within the thirty (30) day period, the Secretary's proposed termination shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(c) A participant may at any time terminate his participation and responsibilities under this program with regard to a specific type of product by giving written notice to the Secretary that he has discontinued use of the Department of Commerce Label and Mark for all consumer products of the type involved.

§ 16.9 Rules governing designated agents.

(a) The following rules, requirements and tasks shall be applicable with respect to the seeking of designated agent status and the performance of that role after such status has been obtained. Each person desiring to be designated as a designated agent under this program shall:

(1) Make written application to the Secretary;

(2) Provide appropriate information showing his qualifications to represent members within a given product area and that more than one prospective participant in that product area is agreeable to such representation; and

(3) Agree to service any participant in this program in the agent's cognizant product area whether or not such participant is a member of the organization or body which that agent represents.

(b) The Secretary may require a person seeking designated agent status to

supply further information before granting such status to that person. The Secretary will notify each person seeking designated agent status, in writing, as expeditiously as possible after evaluating such person's application.

(c) Each person granted designated agent status shall:

(1) Provide the Secretary with a list of the participants that the designated agent services under the program. The Secretary shall also be provided an updated list as soon thereafter as may be practicable whenever there are any changes in the list;

(2) Collect fees and charges from the participants serviced under this program, consolidate such sums, and transmit those fees and charges required under § 16.6 to the Secretary;

(3) Distribute Department of Commerce Marks developed under § 16.10 or instructions for the printing of such Marks to the participants that the designated agent services under this program;

(4) Gather and consolidate such statistical information as may be required by the Secretary from individual participants serviced;

(5) Provide the Secretary with reports, including the consolidated statistical information referred to in paragraph (c)(4) of this section, as may be called for by her, relative to the activities of the participants the designated agent is servicing; and

(6) Perform any additional tasks mutually agreed upon by the designated agent and the Secretary.

(d) If a person seeking designated agent status is notified by the Secretary that she proposes to deny that person such status, that person shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such person in the event that he does not appeal such notification by the end of that thirty (30) day period. If, however, such person requests a hearing within that thirty (30) day period, the Secretary's proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.